2014 CIVIL CASE LAW UPDATE

Sprint Communications, Inc. v. Jacobs, USSC 12-815. The court held that *Younger* abstention did not apply to a federal action against the members of the Iowa Utility Board challenging the Board's interpretation of federal law. The Board's proceeding had been commenced by Sprint, not by the State of Iowa. The court held that *Younger* abstention only applied in three specific circumstances. Abstention is required to prevent federal intrusion in: 1) ongoing state criminal proceedings; 2) certain "civil enforcement proceedings" (including appropriate administrative proceedings); and 3) pending "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." The Court rejected the circuit court's use of three other factors identified by the Supreme Court in *Middlesex* as a separate ground for abstention. The *Middlesex* factors should instead be considered as additional factors in whether one of the three grounds for abstention have been met.

Medtronic, Inc. V. Mirowski Family Ventures, LLC, USSC 12–1128. Mirowski, a patentee, told its licensee (Medtronic) that Medtronic was infringing on Mirowski's patents. Medtronic brought a declaratory judgment action to resolve whether it was infringing on the patents. The court of appeals held that, on summary judgment, Medtronic had the burden to prove that it was not infringing on the patents, even though Mirowski would have had the burden of proof if it had brought the action. Reversing, the Supreme Court held that the patentee always has the burden of proof, even where the action is filed by the alleged patent infringer.

Michigan v. Bay Mills Indian Community, USSC No. 12–515. The tribe opened a casino on land that Michigan claimed was non-Indian land, contrary to the parties' agreement under the Indian Gaming Regulatory Act (IGRA). The tribe moved to dismiss based on tribal sovereign immunity. The Supreme Court held that IGRA only waived the tribe's immunity concerning gambling on Indian lands. Because Michigan claimed the land in question was not Indian land, there was no applicable waiver of the tribe's immunity. The court did suggest that actions against individual officers and agents could be used to challenge the "illegal" casino.

Town of Greece, New York v. Galloway, USSC No. 12-696. The Court upheld the town's starting town meetings with prayer, even though almost all of the prayers were Christian. It was noted that the town did not have any non-Christian churches within its borders. But the court explained that as long as the town was not discriminating, and the prayers were not an effort to proselytize, the constitutional prohibition on the establishment was not violated. Of possible importance is that the court did not use the Lemon endorsement test (reasonable observer test).

Plumhoff v. Rickard, USSC No. 12–1117. Use of deadly force to stop a high speed pursuit that endangers the lives of innocent bystanders does not violate the fourth amendment.

Riley v. California, USSC No. 13-132. A cell phone seized during an arrest cannot be searched without a warrant. The search incident to arrest exception does not apply. Nor does the exception dealing with evidence that may be lost (court held that police can take steps to prevent information on the phone from being remotely deleted).

Lane v. Franks, USSC No. 13-483. Lane testified against a fellow government employee in a criminal trial. The testimony dealt with matters concerning Lane's employment. Lane then claimed he was fired because of his first amendment covered speech (his testimony). The court held that Pickering and Garcetti exception to first amendment protection of an employee's speech only covered speech that was done as part of the speaker's ordinary job duties. While Lane did testify about job-related matters, it was not part of his duties to do so. His testimony was therefore protected by the first amendment.

MacGregor v. Walker, 2014 UT 2. MacGregor was the victim of child abuse. On two occasions she mentioned some of the abuse to her LDS bishop. He did not seek advice in counseling her from the LDS Help Line that was available to him. MacGregor sued her bishop and the church because her bishop did not report the abuse to law enforcement. She claimed that the voluntary act of establishing the help line meant that the church had undertaken a duty to her. Rejecting this argument, the court held that a duty of care to the plaintiff would only be created if the defendants' actions had increased the plaintiff's risk of harm or had caused the harm by the plaintiff's reliance upon their actions. Plaintiff had to "show (1) that the Church, by means of the Help Line, undertook to render a service to her; and (2) that the Church Defendants failed to exercise reasonable care in their administration of the Help Line, thereby either increasing MacGregor's risk of harm or causing MacGregor's harm through her reliance on the Help Line." Id. at ¶13.

State v. Gutierrez-Perez, 2014 UT 11. The court upheld the constitutionality of an ewarrant. The defendant claimed that the affidavit in support of the warrant was not given on oath or affirmation. Of importance is that the court relied on the original understanding of what was an affirmation at common law.

State v. Nielsen, 2014 UT 10. The court fundamentally changed how it would look at a party's failure to marshal the evidence supporting the trier of fact's decision. Failure to marshal is no longer a stand alone grounds for affirming. Instead, an appellant that fails to marshal the evidence and show how it is inadequate to support the lower court's findings of fact will most often have failed to meet its burden of persuasion. Id. at ¶¶ 33-44. "Thus, we reiterate that a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal." Id. at ¶ 42.

In the Matter of the Discipline of Jere B. Reneer, 2014 UT 8. All of the evidence against the attorney was presented to the screening panel, which made its findings and recommendations. No new evidence was presented to the discipline committee that reviewed the screening panel's decision and recommendations. On appeal, the court held that "[w]e grant no deference to the discipline committee's determination of whether substantial evidence supports the screening panel's factual findings because the discipline committee is in no better position than this court to review the record of the screening panel proceedings." Id. at ¶ 9 n.1. This opinion may impact how the courts review all administrative decisions. Changes made to an ALJ's findings of fact on administrative review might no longer be given deference on appeal.

Mallory v. BYU, 2014 UT 27. The Utah Supreme Court reversed the prior decision of the Utah Court of Appeals. Mallory v. BYU, 2012 UT App 242, 285 P.3d 1230. The Supreme Court rejected the court of appeals' definition of what constitutes an employee under Utah's Governmental Immunity Act. Having rejected the lower court's definition, the Supreme Court's majority only held that, in this instance, Provo City's right to control the work done by the "agents" in question made them servants and therefore employees. The court did not provide a complete test for what constituted an employee under the immunity act.

Butler v. Corp. of the Pres., 2014 UT 41. The court held that an interlocutory order must comply with the finality requirements of Utah R. Civ. P. 7(f) (for final orders) before a petition for interlocutory appeal can be filed. The court also held that both the interlocutory order and any order certifying under Rule 54(b) must also comply with Rule 7(f).

Stauffer v. Dep't of Workforce Serv., 2014 UT App 63. An ALJ held that Stauffer was entitled to unemployment benefits, but the Workforce Appeals Board reversed and held that Stauffer was an independent contractor. On appeal, Stauffer argued that the Board could not reweigh the evidence and make credibility determinations. That the Board, like an appellate court, should only have determined if there was adequate evidence in the record to support the ALJ's decision. The Court of Appeals rejected this argument and held that the Board had the authority to take evidence, to reweigh the evidence, and reach its own factual conclusions. "In sum, it was within the Board's authority to weigh the conflicting evidence and make its own credibility determinations, even though its determinations were contrary to those of the ALJ." Id. at ¶9. See also, Uintah County v. Dep't of Workforce Serv., 2014 UT App 44.

Jackson v. Halls, 2013 UT App 254. A judgment creditor executed against the debtors home. The debtor claimed his homestead allowance. The creditor refused to give the debtor cash for his homestead allowance, instead giving him a credit towards the satisfaction of the judgment. The court reversed, holding that the debtor was entitled to receive his homestead allowance in cash.

Burningham v. Westgate Resorts, LTD, 2013 UT App 244. The court held that a claim of "mutual mistake" required testimony that both parties shared a misconception about a basic assumption or vital fact. Evidence of a mistake by only one party is inadequate to prove mutual mistake.

Brown v. Sandy City Appeal Board, 2014 UT App 158. Brown was found unfit for duty as a peace officer after a psychological evaluation. The court held that such decisions would be reviewed under the general abuse of discrimination standard and not the standard used in reviewing disciplinary decisions. Id. at ¶ 8 n.5. Further, the court acknowledged that the Utah Supreme Court had rejected the court of appeals prior public employee disciplinary cases as creating a different standard of review, but that they only provided a useful framework in using the statutory standard or review. Id.

Christensen v. Rolfe, 2014 UT App 223. This appeal involved two consolidated cases. In both cases the trial court reversed informal administrative decisions on their finding that the administrative proceedings had failed to provide petitioners adequate due process. The court reversed both trial courts, holding that trial courts can only review informal proceedings by trial de novo. The trial courts had no authority to review informal administrative proceedings in any other manner.

Salt Lake City Corp. v. Haik, 2014 UT App 193. In denying a GRAMA request, the city inaccurately cited to the statutory provisions that protected some of the requested documents from disclosure. The court held that substantial compliance was sufficient and that the city had not failed to give sufficient notice as to why it withheld the documents.

United Fire Group v. Staker and Parson Companies, 2014 UT App 170. United Fire Group did not have an expert witness to testify that the roadway on which its insured were injured violated the appropriate standards of care. But the court of appeals held that lay jurors could decide if a complete absence of signs preventing access to the road from a particular parking lot violated the standard of care. "The average person has little understanding of the standard of care for temporary traffic control in a major construction project and therefore expert testimony must usually be presented to establish the standard of care for warning travelers of danger. However, if the jury believes United Fire's evidence that there was a complete lack of signage warning the McDowells of dangerous road conditions or of devices guiding them away from such danger, the jury may well find for United Fire even in the absence of expert testimony." Id. at ¶ 16. What is concerning in this decision is that the "complete lack of signage" was from a parking lot back onto the roadway - not that the construction site did not adequately direct traffic on the road.

Cross Continent Dev. v. Akron, 10th Cir. No. 12-1391. The court held its decision had mooted the issue of whether punitive damages could be awarded against a defendant sued in his/her official capacity. But the court felt "compelled" to state that such damages were not available, contrary to a prior Tenth Circuit decision. *Youren v. Tintic Sch. Dist.*, 343 F.3d 1296, 1307 (10th Cir. 2003). The panel also cited prior panel decisions that had also ignored *Youren*.

THI of New Mexico v. Patton, 10th Cir. No. 13-2012. The Federal Arbitration Act was held to preempt New Mexico's common law. A nursing home's arbitration agreement required that a resident's claims of poor quality service or care by the home must be arbitrated, while leaving the home free to bring many of its claims against a resident in court. The New Mexico Court of Appeals had held an identical agreement was unconscionable and unenforceable. The Tenth Circuit held that any state rule of law that was based on a belief that litigation was better than arbitration was preempted by the federal statute.

Lykin v. Certainteed Corp., 10th Cir. No. 12-3308. While granting summary judgment for the defendants, the district court also reversed the magistrate judge's award of sanctions for discovery abuse against the defendants. The Tenth Circuit, in its turn, reversed the district court and reinstated the magistrate judge's decision. "Recognizing that discretion is a fluid concept bounded by a range of reasonableness, we are not persuaded that a district court may substitute its discretion for that of the magistrate judge absent a factual predicate that is clearly erroneous or an application of the law that amounts to legal error." The court held that the district court had abused its discretion by not reviewing the magistrate judge's decision under the appropriate deferential standard.

Bonnet v. Harvest (US) Holdings, Inc., 10th Cir. No. 12-4068. The court held that the Ute Indian Tribe of the Uintah and Ouray Reservation's tribal immunity required a non-party subpoena duces tecum served on the tribe be quashed. The court held that the subpoena qualified as "suit" such that the tribe was immune.

Planned Parenthood of Kansas v. Moser, 10th Cir. No. 11-3235. Kansas passed a law restricting who could receive family-planning services funds from the state under Title X of the Public Health Service Act to "public entities, hospitals, and federally qualified health centers that provide comprehensive primary and preventative healthcare services." Planned Parenthood sued claiming that the law was passed to deny it funds because of its First Amendment speech violating both the federal constitution and federal law. The district court granted a preliminary injunction against the enforcement of the Kansas law. Reversing, the two judge majority held that the injunction was erroneously granted because: "(1) [Title X] does not specifically authorize injunctive relief, (2) [Title X] does not create an individual right (which may be enforceable under 42 U.S.C. § 1983), (3) the statute is enacted under the Constitution's Spending Clause, and (4) the state action is not an enforcement action in adversary legal proceedings to impose sanctions on conduct prohibited by law."

Telez v. City of Belen, 10th Cir. 13-2123. The court held that summary judgment could be granted where the opposing "facts" are blatantly contradicted by video and audio evidence. Only a genuine dispute of facts must exist. "[T]he district court did not err in excluding material portions of the affidavits of Plaintiff's witnesses that were so inconsistent with the other evidence in the record that no reasonable juror could have possibly relied on them to return a verdict in Plaintiff's favor." While this case is unpublished, it makes the point that if totally fallacious evidence cannot be used to avoid summary judgment (with citations to appropriate authority).

Hwang v. Kansas State University, 10th Cir. 13-3070. "While plaintiffs don't have to incant any particular litany of facts to support a claim of differential treatment, they do have to allege some set of facts that taken together plausibly suggest differential treatment of similarly situated employees."

Silverstein v. Federal Bureau of Prisons, 10th Cir. 12-1450. Silverstein was kept in solitary confinement for 30 years. The court held this was not cruel and unusual punishment because of the extreme threat that Silverstein (a member of the three-man commission that ran the Aryan Brotherhood who was convicted of killing two inmates and a prison guard during his incarceration) presented.

EEOC v. Ford Motor Co., 6th Cir. 12-2484. The Sixth Circuit held that telecommuting may qualify as a reasonable accommodation under the ADA.